Applicant : Shunpei YAMAZAKI et al.   Attorney's Docket No.: 12732-0035001 / US4908
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REMARKS

Claims 11-17, 29, 30, 32, 33, 35, 36, 38, 39, 41, 42, 44, 45, 47, 48, 50, 51, 53, 54, 66, 67 and 70-81 are pending with claims 11, 17 and 70-72 being independent. Claims 11, 17 and 70-72 have been amended. The amendments do not raise new issues and are believed to be proper despite the final rejection. No new matter has been introduced.

Claims 11-17, 29, 30, 32, 33, 35, 36, 38, 39, 41, 42, 44, 45, 47, 48, 50, 51, 53, 54, 66 and 67 have been rejected under section 101 as being directed to non-statutory subject matter. Applicant again requests reconsideration and withdrawal of this rejection because the claims are clearly directed to statutory subject matter. In particular, each of independent claims 11 and 17 recites a communications system that includes a storing means, a reading means, a collating means, a controlling means, and a sending means, all of which are structural elements.

For example, claim 11 recites "a storing means for storing reference living body information of the user" and claim 17 recites "a storing means for storing a plurality of kinds of reference living body information of the user." Since these elements are written in means-plus-function format, they must be interpreted to cover the structure set forth in the specification for performing the storing function, or substantial equivalents thereof. At page 15, lines 3-5, the specification sets forth one example of the structure for storing the reference living body information as being "a built-in memory of the authentication apparatus, such as a non-volatile memory." Thus, the storing means must be interpreted to cover at least a non-volatile memory and is not "software per se" as set forth in the rejection.

In response to these arguments, the Examiner appears to argue the recitation of structure in the specification corresponding to the "storing means" is irrelevant because the preambles of claims 11 and 17 use the word "system" instead of "apparatus." Applicant respectfully disagrees. The recitation of "system" instead of "apparatus" does not render section 112, paragraph 6 inapplicable, and the Examiner has no legitimate reason for asserting that it does. Regardless of what words are used in the preamble of the claims, the "storing means" of claims 11 and 17 must be interpreted to cover the structure set forth in the specification for performing the storing function, or substantial equivalents thereof.

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The Examiner also appears to argue that "means" is not defined by the specification, drawings or claims, and the storing means therefore would have been interpreted to cover other than physical articles or objects (though the Examiner does not identify where the specification describes any such storing means that are not physical articles or objects). Applicant again disagrees. There is no requirement to define "means" before section 112, paragraph 6 applies and, accordingly, the Examiner has no legitimate basis for ignoring the clear recitation of a non-volatile memory as being a structure corresponding to the recited "storing means."

Accordingly, for at least these reasons, the storing means must be interpreted to cover at least a non-volatile memory and is not "software per se" as set forth in the rejection. Therefore, the rejection should be withdrawn.

Claims 11-17, 29, 30, 32, 33, 35, 36, 44, 45, 50, 51, 53, 54, 66, 67 and 70-81 have been rejected as being unpatentable over Uchida (UK Patent Application No. GB 2348309) in view of Fukuzumi (U.S. Patent No. 6,144,757) and Applicant Admitted Prior Art ("APA").

With respect to claim 11 and its dependent claims, applicant requests reconsideration and withdrawal of this rejection at least because neither Uchida, Fukuzumi, the APA, nor any proper combination of the three describes or suggests that "a password for re-write of the reference living body information is sent as data to the mating party after the authentication end signal is sent to the mating party," as recited in claim 11. The rejection asserts that this feature is shown by the APA when it notes, at page 3, lines 5-6, that "the authentic person must ask the mating party; or often re-write the password." However, that passage is merely describing what steps the authentic person might have to take in the event that the authentic person forgets a password, and has absolutely nothing to do with sending a password for re-write of the reference living body information to the mating party after the authentication end signal is sent to the mating party.

As noted in applicant's prior reply, the APA also fails elsewhere to describe this feature. For example, at page 2, lines 2-5 of the application, the APA describes sending the password in advance of collation and well before the authentication end signal is sent. At page 2, lines 13-14, the APA describes resending the password in the event of an authentication failure. While this password is sent after the authentication end signal indicating that the previous authentication

was a failure, it is not a "password for re-write of the reference living body information," as recited in claim 11.

Accordingly, for at least these reasons, the rejection of claim 11 and its dependent claims should be withdrawn.

Similarly to claim 11, independent claim 17 recites that "a password for re-write of the reference living body information is sent as data to the manager after the authentication end signal is sent to the manager," independent claim 70 recites "sending a password for re-write of the reference living body information as data to the mating party after the communication is started," and independent claim 71 recites "sending a password for re-write of the reference living body information as data to the manager after the communication is started." Accordingly, for reasons similar to those discussed above with respect to claim 11, the rejection of independent claims 17, 70 and 71, and their dependent claims, should be withdrawn.

With respect to claim 72, applicant requests reconsideration and withdrawal of this rejection at least because neither Uchida, Fukuzumi, the APA, nor any proper combination of the three describes or suggests "outputting an authentication end signal from a controlling means, sending the authentication end signal to a manager, sending the authentication end signal received by the manager to a mating party, and starting a communication between the user and the mating party directly after the mating party receives the authentication end signal," as recited in claim 72. The rejection appears to argue that the APA shows these features as a result of the discussion by the APA of having the use transmit the password to the mating party on two different occasions. In making this argument, the rejection relies upon the assertion that "mating party and manager are interchangeably used." This is incorrect in that claim 72 clearly recites that the mating party and the manager are two different entities. Accordingly, for at least these reasons, the rejection of claim 72 should be withdrawn.

Applicants submit that all claims are in condition for allowance.

The fee in the amount of $490 in payment of the two-month extension fee is being paid

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concurrently herewith on the Electronic Filing System (EFS) by way of Deposit Account

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         Respectfully submitted,

Date: _____10/6/08_____   _____

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